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6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 IN RE: CASE No. 17-10828 WJL

9 FLOYD E. SQUIRES, III and CHAPTER 11
10 BETTY J. SQUIRES,

11 Debtors. / MEMORANDUM OF POINTS AND
12 AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER EXCUSING TURNOVER BY
CUSTODIAN

Date: December 21, 2017

13 Time: 10:00 a.m.

14 Place: 99 South E St.
Santa Rosa, CA

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16 FLOYD E. SQUIRES, III and BETTY J. SQUIRES, Debtors herein,
17 submit the following Memorandum of Points and Authorities in
18 support of their Motion to excuse turnover by a custodian:

19 1. A "custodian" is defined by 11 U.S.C. §101(11) is a
20 receiver of any of the property of the debtor, appointed in a case
21 or proceeding not under Title 11.

22 The Superior Court case in which the receiver was appointed is
23 not a case or proceeding under Title 11. The receiver was
24 appointed by that Court pursuant to the California Business and
25 Professions Code § 17200. However, there is a question as to
26 whether the receiver was appointed "of any property of the debtor".
27 The health and safety aspects of property of the estate could be

1 said to constitute property of the Debtors and certainly property
2 rights of the Debtors even though the property of which the
3 receiver is vested is intangible.

4 2. The completion of the receiver's review and report will
5 have a significant impact on the property of the estate which will
6 be best served to have the work of the receiver completed under the
7 guidance of the Superior Court.

8 3. The receiver was appointed pursuant to the California
9 Business and Professions Code §17200. The Court found that the
10 Plaintiffs had not made the showing required under the California
11 Health and Safety Code and a receiver was not appointed pursuant
12 thereto. Fees and costs of the prevailing party on the Health and
13 Safety Code issues have not been determined.

14 4. There may be a dispute as to the amount remaining for the
15 receiver to do. Although properties have been cleared by the
16 Receiver, additional violations occur by acts of third parties.
17 Despite having sought the appointment of the receiver, the City
18 Attorney has attempted to have Mr. Smith removed as receiver on
19 three separate instances. Such efforts were rejected by the
20 Superior Court each time.

21 5. The continued improvement of the remaining properties
22 through compliance with directives of the receiver are in the best
23 interests of secured creditors, the estate and the equity holders.

24 6. The intangible rights entrusted to Mr. Smith may be
25 subject to turnover to the Debtor pursuant to 11 U.S.C. §543. Such
26 turnover may be excused by the Court after notice and hearing if
27 the interests of creditors and the interests of equity security

1 holders would be better served by permitting a custodian to
2 continue in possession, or control of such intangible rights. 11
3 U.S.C. §543(d).

4 Wherefore, Debtor prays for an Order of this Court excusing
5 compliance with subsections (a), (b) and (c) of Section 543.

6 Dated: 12/14/17

Respectfully submitted,

7 DAVID N. CHANDLER, p.c.

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9 By: /s/David N. Chandler

10 David N. Chandler

11 Attorneys for Debtor
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